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State of New York Public Employment Relations Board Decisions from May 31, 1994

New York State Public Employment Relations Board

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Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

2A- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION LOCAL 424, A DIVISION OF UNITED INDUSTRY WORKERS DISTRICT COUNCIL 424,

Petitioner,

- and -

NORTHPORT/EAST NORTHPORT UNION FREE SCHOOL DISTRICT, SOUTH HUNTINGTON UNION FREE SCHOOL DISTRICT, CARLE PLACE UNION FREE SCHOOL DISTRICT, ROOSEVELT UNION FREE SCHOOL DISTRICT, and WYANDANCH UNION FREE SCHOOL DISTRICT,

Employers,

- and -

LOCAL 144, LONG ISLAND DIVISION, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO,

Intervenor.

CASE NOS. C-4165, C-4166, C-4171, C-4172, and C-4175

In the Matter of

UNITED PUBLIC SERVICE EMPLOYEES UNION LOCAL 424, A DIVISION OF UNITED INDUSTRY WORKERS DISTRICT COUNCIL 424,

Petitioner,

- and -

COUNTY OF ALBANY and ALBANY COUNTY SHERIFF,

Joint Employer,

- and -

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Intervenor.

CASE NO. C-4224

RICHARD M. GREENSPAN, P.C. (RICHARD M. GREENSPAN and STUART A. WEINBERGER of counsel), for Petitioner

VLADECK, WALDMAN, ELIAS & ENGELHARD, P.C. (LARRY CARY of counsel), for Intervenor in C-4165, C-4166, C-4171, C-4172 and C-4175.

INGERMAN, SMITH, GREENBERG, GROSS, RICHMOND, HEIDELBERGER, REICH & SCRICCA (JONATHAN HEIDELBERGER of counsel), for Employer in C-4165

GEORGE A. JACKSON for Employer in C-4166

JASPAN, GINSBERG, SCHLESINGER, SILVERMAN & HOFFMAN (JOHN O. FRONCE of counsel), for Employer in C-4171

COOPER, SAPIR & COHEN (DAVID COHEN of counsel), for Employer in C-4172

KEVIN A. SEAMAN, Esq., for Employer in C-4175

NANCY E. HOFFMAN, GENERAL COUNSEL (STEVEN A. CRAIN of counsel), for Intervenor in C-4224

ROEMER AND FEATHERSTONHAUGH, P.C. (WILLIAM M. WALLENS of counsel), for Joint Employer in C-4224

BOARD DECISION AND ORDER

These cases come to us on exceptions to decisions by the Director of Public Employment Practices and Representation (Director) filed by Local 144, Long Island Division, Service Employees International Union, AFL-CIO (Local 144) and the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA). The petitioner in each of these cases is the United Public Service Employees Union Local 424, A Division of United Industry Workers District Council 424 (Local 424). During the Director's processing of these petitions, Local 144 and CSEA questioned Local 424's status as an employee organization within

the meaning of §201.5 of the Public Employees' Fair Employment Act (Act). Their primary argument then and now is that provisions in the constitutions of Local 424 and the separate District Council 424 prevent Local 424 from fulfilling its obligations as a collective bargaining agent because effective control over "all [Local 424's] transactions with employers", including collective negotiations and contract administration and enforcement, are vested in District Council 424.

The Director held that these constitutional provisions did not deprive Local 424 of its employee organization status because District Council 424 served as Local 424's agent for the purpose of improving the employees' terms and conditions of employment.

Local 144 and CSEA argue in their exceptions that the Director erred in finding Local 424 to be an employee organization. In its response, Local 424, for the first time, alleges that the constitutions of both Local 424 and District Council 424 were amended to remove any alleged or perceived impediments to Local 424's exercise of rights and duties as a certified bargaining agent under the Act. These amendments may have been made, actually or effectively, before any of these petitions were filed.

Having considered the parties' arguments, including those at oral argument, we hold that Local 424's allegations regarding amendments to its and District Council 424's constitutions necessitate that we remand these cases to the Director for further investigation and decision.

The Director was not informed during his investigation that the constitutions of Local 424 and District Council 424 had been amended. Therefore, his decisions, and Local 144's and CSEA's arguments, were based entirely on constitutional provisions which Local 424 itself now alleges have been changed or eliminated. The Director did not, therefore, make any findings of fact as to whether the constitutions were amended and, if so, when, by whom, under what circumstances or to what effect; nor did he make any conclusions of law regarding Local 424's status as an employee organization under the constitutions as amended. We consider it necessary and appropriate to have these findings and conclusions made by the Director before making any decision regarding Local 424's status as an employee organization. Otherwise, we engage in confusing speculation which will likely delay resolution of the representation questions and prejudice the parties and the employees they represent or seek to represent.

Local 144 argues that we may not consider any amendments to Local 424's or District Council 424's constitutions because Local 424 failed to mention the constitutional amendments to the Director. We reject this argument because it is our right and duty to certify only qualified employee organizations. Having been apprised of this circumstance, our responsibility to the public employees affected by these petitions demands that we have the information necessary to determine Local 424's status.

The basic issue in these cases is common to several other cases in various stages of processing and litigation. The rights

of the many parties and employees affected by these petitions require that the status of Local 424 as an employee organization be determined as quickly as reasonably possible. Accordingly, the Director is hereby instructed that his investigation pursuant to this remand is to be completed within forty-five days from the date of our decision and order herein. All parties are ordered to comply with all lawful directives of the Director to that end.

On remand, in addition to such other information as the Director may deem to be relevant, the Director is hereby instructed to make findings of fact and conclusions of law regarding the following:

1. Whether the constitutions and by-laws, if any, of Local 424 and District Council 424 have been validly amended in any relevant respect, and if so, in what respect(s). Findings are to include the dates on which those amendments were made and the effective dates thereof.
2. The nature of the legal and operational relationship between Local 424 and District Council 424, including a specific identification of the separate rights and duties of each organization, including, without limitation, findings as to whether District Council 424 has or exercises any power or veto over any action or decision by Local 424 with respect to collective negotiations under the Act, the administration of any collective bargaining agreement covering any public

employees subject to our jurisdiction, or the representation of public employees under the Act.

For the reasons set forth above, these cases are remanded to the Director for further investigation and decision consistent with our decision and order herein. SO ORDERED.[1/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

[1/]Member Schmertz declined at oral argument to recuse himself pursuant to motion of Local 424. However, he was unable to attend this meeting of the Board and, accordingly, he did not sign this decision.

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ULSTER COUNTY SHERIFF'S EMPLOYEES ASSOCIATION,

Charging Party,

-and-

CASE NO. U-13780

ULSTER COUNTY SHERIFF,

Respondent.

THOMAS J. KRAJCI, for Charging Party

ROEMER & FEATHERSTONHAUGH, P.C. (WILLIAM M. WALLENS and JOHN J. TOY, JR., of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Ulster County Sheriff (County or Sheriff) to a decision by an Administrative Law Judge (ALJ) on a charge filed by the Ulster County Sheriff's Employees Association (Association). The Association alleges in its charge that the Sheriff prohibited deputy sheriffs from working for any other law enforcement agency during their off-duty hours[1/] in violation of §209-a.1(d) of the

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[1/]The prohibition was effected by a July 28, 1992 General Order that provides as follows:

> Members of the CRIMINAL DIVISION will not be employed by any other law enforcement agency, department, organization, or law enforcement related organizations which do security related work, shoplifter apprehension, etc., either on a full- or part-time basis.

Affected employees were ordered to cease any outside law enforcement work immediately.

Public Employees' Fair Employment Act (Act). The policy and practice previously in effect permitted this type of off-duty employment subject to some degree of the Sheriff's approval and regulation.

After a hearing, the ALJ found a violation as alleged, rejecting the County's defenses that the Sheriff's General Order in issue is not mandatorily negotiable and that the Association had waived any right to bargain the prohibition on outside law enforcement work.

The County's exceptions raise the same arguments regarding negotiability and waiver as were presented to the ALJ. The Association argues in its response that the ALJ's decision is correct and should be affirmed.

Having reviewed the record and considered the parties' arguments, we affirm the ALJ's decision.

An employer's restriction on employees' use of their nonworking time is generally mandatorily negotiable.[2/] The County argues, however, that a balance of competing interests in this particular case should favor the nonmandatory negotiability of the outside work prohibition because it is reasonable and the County and Sheriff might be legally liable for the deputy sheriffs' actions during employment with other law enforcement agencies because the County trained them. These factors, however, affect only the substantive merits of its outside work

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[2/] Local 589, Int'l Ass'n of Fire Fighters, 16 PERB ¶3030 (1983); Buffalo Patrolmen's Benevolent Ass'n, 9 PERB ¶3024 (1976).

prohibition and the likelihood of the parties reaching an agreement in negotiations. The County's potential civil liability is primarily, if not exclusively, an economic consideration, an issue resting at the core of the bargaining process. Therefore, we hold that the General Order is a mandatory subject of bargaining in relevant respect.

We also affirm the ALJ's disposition of the County's waiver defense. The County's management rights clause is nonspecific and too general to operate as a plain and clear waiver of bargaining rights. It merely retains to the County its "usual" rights regarding the carrying-out of its mission. Even those management rights as further particularized in Article VI, section 22 of the parties' contract do not evidence a waiver. Under this clause of the contract, procedures which affect unit employees and which implement the contract are given to the Association for discussion at least twenty-four hours before those procedures become effective. The prohibition against deputy sheriffs working for other law enforcement agencies is not a procedure and it does not implement a term of the agreement because the contract is silent with respect to off-duty work. Similarly, the Association's alleged acquiescence to the County's earlier restrictions on off-duty work does not constitute a waiver of its right to bargain a subsequent prohibition.[3/]

[3/]Auburn Enlarged City Sch. Dist., 25 PERB ¶3055 (1992).

For the reasons set forth above, the County's exceptions are denied and the ALJ's decision is affirmed.[4/]

IT IS, THEREFORE, ORDERED that the County and Sheriff:

1. Rescind the Sheriff's General Order issued on July 28, 1992, which prohibited members of the Sheriff's Department Criminal Division from engaging in off-duty law enforcement employment.
2. Post the attached notice in all locations ordinarily used to post notices of information to unit employees.

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

[4/]Member Schmertz was absent and did not participate.

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify the employees of the County of Ulster Sheriff's Department who are represented by the Ulster County Sheriff's Employees Association that the County and Sheriff will:

1. Rescind the Sheriff's General Order issued on July 28, 1992, which prohibited members of the Sheriff's Department Criminal Division from engaging in off-duty law enforcement employment.

Dated . . . . . By . . . . . .
(Representative) (Title)

ULSTER COUNTY (SHERIFF'S DEPARTMENT)

. . . . . .

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Charging Party,

-and-

CASE NO. U-13786

GARDEN CITY UNION FREE SCHOOL DISTRICT,

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (MIGUEL ORTIZ of counsel), for Charging Party

CULLEN and DYKMAN (THOMAS M. LAMBERTI, THOMAS B. WASSEL and CARL A. LASKE of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions to a decision by an Administrative Law Judge (ALJ) filed by the Garden City Union Free School District (District). The Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) charged that the District violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it subcontracted its cafeteria operation. On a stipulated record, the ALJ held that the District violated the Act as alleged and ordered restoration of the cafeteria work to CSEA's unit and reinstatement of the cafeteria staff with back pay and benefits.

The District argues that its contract with CSEA permitted it to subcontract its cafeteria services. According to the District, the ALJ's decision finding no waiver by contract misapplies the law. It argues also that the austerity budget

under which it was then operating permitted it to subcontract its cafeteria services and that the remedy ordered by the ALJ is illegal under the provisions of the Education Law governing austerity budgets.

CSEA argues that the ALJ's findings of fact, conclusions of law and remedial order are correct and appropriate and his decision should be affirmed.

Having considered the parties' arguments, we reverse the ALJ's decision. Our reversal is based upon our disagreement with the ALJ's analysis of the District's waiver defense. Accordingly, we do not reach any of the District's other exceptions.

Our recent decision in County of Livingston,[1/] issued after the ALJ's decision in this case, is dispositive of this matter. In County of Livingston, we held that a union's agreement to a management rights clause under which the employer was permitted "to determine whether and to what extent the work required in operating its business and supplying its services shall be performed by employees covered by this Agreement", waived any further bargaining rights the union had with respect to the employer's transfer of unit work. In County of Livingston, we reversed the ALJ's determination that the clause was not specific enough to establish a waiver. The management rights clause in this case, which grants the District the right to "contract for

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[1/] 26 PERB ¶3074 (1993).

performance of any of its services", is even more specific than the one in County of Livingston. The District's right encompasses "any" of its services. The all-inclusive meaning of "any" made it unnecessary to enumerate each of the services. Therefore, the ALJ's determination here that there is no waiver because the clause does not refer specifically to cafeteria services must be reversed.

The ALJ also held that the management rights clause did not operate as a waiver of further bargaining because it was ambiguous when read in conjunction with two other provisions of the parties' contract. We hold, however, that the management rights clause when read in context retains its clarity.

Article IV, §3 of the contract, entitled "Hours of Work", "guarantees" cafeteria employees 179 days of work during the school year. The ALJ interpreted this language as a guarantee of job security. However, there being no evidence of contrary intent, this language is most reasonably read to mean only that the cafeteria workers' "guarantee" is operative if the cafeteria workers are employed. The ALJ's interpretation of this clause would again render the management rights clause meaningless in relevant respect and erect a restriction upon a right otherwise unqualified. All provisions of the agreement must be given effect and our reading of the cafeteria workers' "Hours of Work" provision gives effect to both that provision and the management rights clause.

Moreover, if the "Hours of Work" provision in Article IV, §3, were to be read as suggested by the ALJ, we would be without jurisdiction over the charge under §205.5(d) of the Act. The "Hours of Work" clause, on the ALJ's interpretation, is plainly a source of right to CSEA preventing the District from subcontracting.[2/] On that interpretation of Article IV, §3, CSEA bargained for and obtained job security for the cafeteria workers which barred their replacement under a subcontracting arrangement.

The management rights clause also provides that the District's actions taken thereunder may not be "inconsistent" with the Civil Service Law. The ALJ held that this language restated and preserved the District's duty to bargain any subcontracting. In this respect, the ALJ relied upon City of Poughkeepsie v. Newman (hereafter City of Poughkeepsie).[3/] In County of Livingston, we held that City of Poughkeepsie was plainly distinguishable; it is similarly distinguishable here for several reasons. First, in City of Poughkeepsie, there was unrebutted testimony from the union that the employer's right to subcontract was specifically intended to be limited by its duty to negotiate under the Act. Second, in City of Poughkeepsie, the employer's own conduct evidenced that it understood and agreed

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[2/]The jurisdictional limitation in §205.5(d) of the Act is applicable if the contract is a reasonably arguable source of right to the charging party with respect to the subject matter of the improper practice charge. County of Nassau, 24 PERB ¶3029 (1991).

[3/]95 A.D.2d 101, 16 PERB ¶7021 (3d Dep't 1983), appeal dismissed, 60 N.Y.2d 859, 16 PERB ¶7027 (1983).

that the clause had the meaning which had been ascribed to it by the union in its testimony. There is no similar evidence in this case. Third, the language of the clause in City of Poughkeepsie is not similar to the restrictive language here. The employer's right in City of Poughkeepsie was specifically subjected to the requirements of the Act, which include a duty to bargain. In this case, the District's exercise of a contract right to subcontract which has been obtained as a result of collective bargaining under the Act is simply not "inconsistent" with the Act. In that circumstance, the decisional bargaining obligations under the Act have been satisfied as a result of the bargaining that produced the agreement.

For the reasons set forth above, the ALJ's decision is reversed.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.[4/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

[4/]Member Schmertz was absent and did not participate.

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

THEODORE A. KONOPKA,

Charging Party,

-and-

CASE NO. U-14764

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Respondent,

-and-

COUNTY OF WARREN,

Employer.

THEODORE A. KONOPKA, pro se

NANCY E. HOFFMAN, GENERAL COUNSEL (MARILYN S. DYMOND of counsel), for Respondent

BARTLETT, PONTIFF, STEWART & RHODES, P.C. (J. LAWRENCE PALTROWITZ of counsel), for Employer

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by Theodore A. Konopka to a decision by an Administrative Law Judge (ALJ). Konopka filed a charge against the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) alleging that CSEA had breached its duty of fair representation in violation of §209-a.2(c) of the Public Employees' Fair Employment Act (Act). His charge involved his layoff from employment and a related arbitration. Although no allegations of statutory impropriety were leveled against it, Konopka's former employer,

the County of Warren (County), is a party under §209.3 of the Act.

Until the pre-hearing conference, Konopka appeared pro se and thereafter, until this appeal, by attorney. The ALJ dismissed the charge for failure to prosecute because Konopka and his attorney did not comply with or respond to several of her oral and written directives. Specifically, the ALJ several times ordered submission of a verified statement pursuant to CSEA's motion for particularization of the charge, an amendment of the charge if newly asserted facts were to be considered, and a written clarification of the charge.

By letter dated December 13, 1993, Konopka's attorney was told by the ALJ that the charge would be dismissed if there was no response to the prior directives by January 5, 1994. There was no response and the ALJ dismissed the charge.

Repeated nonresponse to directives within the scope of an ALJ's discretion and authority is a ground for the dismissal of a charge for failure to prosecute. Konopka does not argue with this proposition. He argues, however, that he was personally unaware of any directives issued after the pre-hearing conference because they were issued only to his attorney, who allegedly failed to keep him informed. The issue before us, therefore, is whether an attorney's alleged negligence or malfeasance in failing or refusing to comply with an ALJ's directives, which is unknown to a charging party, affords the charging party a defense

to the dismissal of a charge which is otherwise warranted. We hold that it cannot and, therefore, affirm the ALJ's decision.

Once he retained an attorney, Konopka made that attorney his exclusive agent for purposes of receipt of communications during the processing of the charge. The ALJ's communications to Konopka's attorney were entirely appropriate. The orderly processing of cases pending before the agency and the rights and interests of the other parties to those proceedings rely, in part, on the well-settled principle that notice to the attorney is notice to the client. We find no basis in this case for an exception to this principle. If Konopka's attorney breached any duty in his representation of Konopka, that is a matter which Konopka may address in other forums. Were we to accept Konopka's argument, we would surely become embroiled in litigation over issues which are wholly unrelated to the allegations in a charge, i.e., whether Konopka's attorney in fact failed to keep him informed and, if so, whether Konopka was reasonable in not inquiring of his attorney or the ALJ regarding the status of his charge.

For the reasons set forth above, Konopka's exceptions are dismissed and the ALJ's decision is affirmed.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.[1/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

[1/]Member Schmertz was absent and did not participate.

2E- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WAPPINGERS CENTRAL SCHOOL DISTRICT,

Charging Party,

-and-

CASE NO. U-14963

WAPPINGERS CONGRESS OF TEACHERS/NYSUT/AFT,

Respondent.

RAYMOND G. KRUSE, ESQ., for Charging Party

FRAN WOLF, for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Wappingers Central School District (District) to a decision by the Director of Public Employment Practices and Representation (Director). The Director dismissed the District's charge against the Wappingers Congress of Teachers/NYSUT/AFT (WCT) which alleges that the WCT violated its duty to negotiate in good faith when it reprinted in its newspaper a cartoon depicting certain board of education members and a District administrator as clowns and circus animals which had first appeared in the District's student newspaper. The District considers that the cartoon "vilified" the board of education members and the District administrator and it alleges that the WCT's purpose was to both punish the District administrator for his testimony in an earlier

arbitration and to pressure him and the board of education members regarding their opinions and positions during collective negotiations and grievance adjustments. The District argues in its exceptions that its charge as filed and amended was sufficient to support the violation alleged and that the Director erred in dismissing the charge. WCT urges that we affirm the Director's decision.

Having considered the parties' arguments, we affirm the Director's decision.

The District's charge is premised upon WCT's alleged refusal to bargain in good faith. There is no issue here as to the propriety of any disciplinary action which the District may have initiated nor as to whether any employee was engaged in statutorily protected activity in the preparation or distribution of the cartoon. Assuming the truth of the District's allegations in the charge as filed and amended, we agree that the District has not stated a cognizable violation of WCT's bargaining obligations under §209-a.2(b) of the Act.

The central premise of the District's charge is that it and its agents have a right under the Act to make "free and independent judgments" regarding collective bargaining proposals and grievance adjustments. The central flaw in this premise is that a negotiating relationship always includes myriad pressures which are specifically intended to cause a party to change its position on a matter involving some aspect of the employer-employee relationship. Labor negotiations under the Act are

fundamentally all about pressure in one form or another. Only when conduct at or away from the bargaining table becomes unlawful does the Act seek to regulate or curtail that conduct. For example, we have held that a union's threat of a strike in certain circumstances is a refusal to bargain, but only because the threatened conduct is itself unlawful under the Act.[1/] However offensive WCT's reprint of the cartoon may have been to the District, a union's unfavorable depiction of an employer's agents is not an unlawful refusal to negotiate in good faith. Ultimately, other than its arguably "offensive" nature, nothing distinguishes WCT's cartoon from any other "pressure" tactic commonly used by employers and unions alike during the negotiation or administration of a contract, such as media campaigns, lawful picketing or other forms of internal or external communications. We find no persuasive rationale which would prohibit one form of lawful pressure, yet allow others, only because one form may be considered by some to be in poor taste. The Act simply does not exact any particular level of civility from the parties involved in a bargaining relationship.[2/]

The District's exceptions are dismissed and the Director's decision is affirmed.

[1/]East Meadow Teachers' Ass'n, 16 PERB ¶3086 (1983).

[2/]See Yonkers Bd. of Educ., 10 PERB ¶3057 (1977) (A union's charge alleging an employer repeatedly vilified the union and its president for the purpose of pressuring them to relinquish benefits was dismissed).

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.[3/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

[3/]Member Schmertz was absent and did not participate.

2F- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MT. MARKHAM TEACHERS ASSOCIATION, LOCAL 2851, NYSUT, AFT, AFL-CIO,

Charging Party,

-and-

CASE NO. U-13885

MT. MARKHAM CENTRAL SCHOOL DISTRICT,

Respondent.

DOUGLAS M. FLYNN, for Charging Party

SCOLARO, SHULMAN, COHEN, LAWLER & BURSTEIN (HENRY F. SOBOTA of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Mt. Markham Central School District (District) to a decision by an Administrative Law Judge (ALJ). The Mt. Markham Teachers Association, Local 2851, NYSUT, AFT, AFL-CIO (Association) charged that the District violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally discontinued in 1992 a long-standing practice of early release for teachers on the first day of school.

After a hearing, the ALJ held that the District's action violated the Act as alleged. In finding a violation, the ALJ rejected the District's contract defenses and a defense based on alleged strike activity by the Association in violation of §210

of the Act. The District argues in its exceptions that PERB is without jurisdiction over the charge pursuant to §205.5(d) of the Act and the notice of claim requirements contained in Education Law §3813, that it had a contractual right to extend the teachers' dismissal time on opening day, and that the Association lost any right to the maintenance of any prior release time practice because teachers engaged in a boycott of several teacher committees in 1991 and 1992.

The Association in its response argues that the exceptions are procedurally defective, that the District waived Education Law §3813 by not earlier raising that claim, and that the ALJ also correctly decided all other issues and his decision should be affirmed.

Having reviewed the record and considered the parties' arguments, we reverse the ALJ's decision on the ground that we lack jurisdiction over the charge under §205.5(d) of the Act.

We consider first the Association's argument that the exceptions are procedurally defective and the District's jurisdictional defense under Education Law §3813.

The District received the ALJ's decision on January 5, 1994. It filed its exceptions by mail on January 26, 1994, within the fifteen working days allotted under §204.10(a) of our Rules of Procedure (Rules). The District also filed with us by mail an affidavit of service of exceptions. The Association apparently was not served a copy of the affidavit of service, but one was not required under our current Rules. We agree, however, that

the Association and others similarly situated can be disadvantaged in assessing the timeliness of exceptions unless they know the date the decision was received, the method of filing and the filing date. Although we will consider an appropriate modification of our Rules in these respects, the District's exceptions were both timely and procedurally correct under existing Rules.

The Association also argues that we should disregard the exceptions because they mostly repeat arguments which were made to the ALJ. A party, however, is not precluded from renewing on appeal arguments which were raised below. Indeed, a party may be prevented, and is certainly discouraged, from raising new claims or arguments on appeal which were not raised below.

We consider next the District's argument that we lack jurisdiction over the charge under Education Law §3813. Education Law §3813 requires a notice of claim to be filed with a school district as a condition precedent to the commencement of an action against a school district. In a case involving a school district which had raised a union's noncompliance with Education Law §3813 as a bar to the union's improper practice charge, the Appellate Division, Third Department, recently affirmed a September 1993 judgment of the Supreme Court, Albany County, holding that Education Law §3813 is applicable to at

least certain improper practice proceedings before PERB.[1/] In this case, the District did not raise Education Law §3813 to the ALJ, but only to us for the first time on this appeal. An Education Law §3813 claim is waived if not properly and timely raised.[2/] In judicial proceedings, the claim must be raised in the court of original jurisdiction. If the Appellate Division is correct in holding that Education Law §3813 applies to any of our improper practice proceedings, it must follow that the claim must be raised before the presiding ALJ, the closest administrative equivalent in our proceedings to the court of original jurisdiction. Not having raised its Education Law §3813 claim to the ALJ, the District waived any defense resting on that statutory provision.

The District also claims that certain provisions of the parties' contract are a reasonably arguable source of right to the Association, which render the District's action a contract violation over which we have no jurisdiction under §205.5(d) of the Act.[3/]

Article IV(A)(1) of the parties' contract provides, in relevant respect, that the length of the "required workday" (7½

[1/]Union-Endicott Cent. Sch. Dist. v. PERB, ___ A.D.2d ___, 27 PERB ¶7005 (3d Dep't 1994), aff'g 26 PERB ¶7011, rev'g 25 PERB ¶3083 (1992) (A motion to the Court of Appeals for permission to appeal is pending).

[2/]Schlosser v. E. Ramapo Cent. Sch. Dist., 47 N.Y.2d 811 (1979); Flanagan v. Commack Union Free Sch. Dist., 47 N.Y.2d 613 (1979).

[3/]County of Nassau, 23 PERB ¶3051 (1990).

hours) "will not exceed that in effect during the 1987-88 school year". The District asserts that this first part of Article IV (A)(1) was arguably violated in 1992 because the "workday" that year was longer than the workday in 1987-88. Article IV (A)(1) also requires that "actual building schedules shall be developed by the respective building principals and building union representatives". The District asserts that it arguably violated this provision of the contract when the former building schedules were superseded by one unilaterally promulgated by the superintendent of schools without consultation with any Association officials.

The ALJ found that Article IV (A)(1) covers only the regular instructional day, not the first scheduled day of the term, which was designated a superintendent's conference day in 1992. Contrary to the ALJ, we do not find Article IV (A)(1) to be applicable only to the instructional day. Although Article IV (A)(1) clearly applies to the instructional day, its language is not reasonably susceptible to a conclusion that it is not applicable to other days on which the teachers' presence in school is required by the District. Article IV (A)(1) applies to a "workday". The first scheduled day of the school year is plainly a "workday" for the teachers. The District's action in extending the teachers' dismissal in 1992, therefore, arguably violated the cited provisions of Article IV (A)(1), which we find covers the "workday" generally, not only those days on which

instruction is offered to students. Section 205.5(d) of the Act, therefore, necessitates dismissal for lack of jurisdiction.

For the reasons set forth above, the ALJ's decision is reversed and the case is dismissed for lack of jurisdiction pursuant to §205.5(d) of the Act.[4/] It is, therefore, not necessary for us to consider the District's waiver and strike defenses.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

[4/]Member Schmertz was absent and did not participate.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE TECHNICAL GUILD, LOCAL 375, DISTRICT COUNCIL 37, AFSCME, AFL-CIO,

Petitioner,

-and-

CASE NO. CP-164

BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK,

Employer,

-and-

LOCAL 2627, DISTRICT COUNCIL 37, AFSCME, AFL-CIO,

Intervenor.

EMILY BASS, ESQ., for Petitioner

DAVID BASS, GENERAL COUNSEL (JERRY ROTHMAN of counsel), for Employer

JOAN STERN KIOK, ESQ., for Intervenor

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the Civil Service Technical Guild, Local 375, District Council 37, AFSCME, AFL-CIO (petitioner) to a decision by the Director of Public Employment Practices and Representation (Director) placing certain unrepresented employees of the Board of Education of the City School District of the City of New York (employer) into a

unit of the employer's employees who are represented by Local 2627, District Council 37, AFSCME, AFL-CIO (intervenor).

After nearly two years were spent attempting to resolve the issues raised by the petition,[1/] ten days of hearing were held during 1991, 1992 and 1993. The Director found that the titles in issue - Telecommunications Associate Level I and II and Telecommunications Specialist - shared a greater community of interest with the computer-related job titles which are represented by the intervenor than with the employees in the petitioner's unit.

The petitioner excepts on the ground that the titles covered by its petition are most appropriately placed in its unit. It also argues that there are errors of fact and law in the Director's decision. The intervenor supports the Director's decision. The employer has not taken a uniting position.[2/]

For the reasons set forth below, we affirm the decision of the Director.

The petitioner represents various skilled, technical and professional employees employed in several agencies of the City

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1/ The petition was filed on July 18, 1988. Both the intervenor and the Communications Workers of America, Local 1180 (CWA) were named in the petition as employee organizations which might be affected by the petition. CWA declined any interest in representing any of the in-issue titles.

2/ The employer did respond to certain allegations of impropriety made against it by the petitioner in its exceptions.

of New York (City) and employees in similar titles who are employed by the employer. The intervenor, which is likewise certified to represent certain employees of the City, including a unit of employees in comparable telecommunications and computer titles,[3/] also represents a unit of employees in computer-related titles employed by the employer.

The employer's Bureau of Telecommunications (BOT) is responsible for the acquisition and installation of the employer's voice and data communications systems. It contracts for the maintenance of those systems, negotiates for long-distance service contracts and investigates and analyzes adjunct telecommunications equipment, unless an entire system is being installed due to a new school construction or totally revised as part of a complete renovation of a school.

The deputy director of BOT, Scott Matluck, is a telecommunications specialist. He supervises other telecommunications specialists and telecommunications associates, as well as some computer-related titles, such as computer

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3/ In 1988, the intervenor and the petitioner sought to represent new telecommunications titles created by the City. The New York City Office of Collective Bargaining (OCB), after several days of hearing, issued a decision and order finding that the titles were most appropriately accreted to the intervenor's unit. (Decision No.9-88, Office of Collective Bargaining). The Director relied, in part, on that decision in making his uniting decision. The petitioner excepts to the Director's reference to, and reliance on, OCB's decision.

specialist, associate and technician, all of whom are represented by the intervenor.[4/] The telecommunications specialists work as project managers, developing specifications which outline each project's goals with respect to the installation of the particular telecommunications system at the employer's facilities. The telecommunications associates work as junior project managers, reporting directly to the telecommunications specialist, and exercising similar responsibilities, although without the same degree of decision-making authority.

The employer's Division of School Facilities (DSF) is responsible for the repair of all electrical, maintenance, engineering and security inspection functions at the employer's facilities. The DSF is also responsible for work on telephone lines to the extent that they connect the alarm system in each of the schools with DSF's central monitoring system. This responsibility requires some interaction between DSF and BOT when telecommunications problems arise which affect the alarm system. Employees of BOT are responsible for making the repairs while DSF employees inspect the system afterward to ensure that the reported problems were corrected. All the employees of DSF

[4/] The employees in the computer titles may be assigned to special projects in the BOT as needed.

performing the above functions are represented by the petitioner.[5/]

The employer, in its Division of Computer Information Services (DCIS), is currently engaged in the "Automate the Schools" project (ATS) designed to link local area networks at all of its schools and offices to the mainframe computer at its Metrotech Plaza location. ATS is under the direction of Michael Woods, a computer associate software II, and manager of PC Development and Technical Support, Dan Casucci, a telecommunications specialist, and Lou Lombardi, also a telecommunications specialist, at DCIS. They interact with various employees in both computer and telecommunications titles at DCIS in the planning for and installation of the ATS components.

5/ During the course of the hearing, the petitioner introduced evidence that it represents employees in similar telecommunications titles employed by the School Construction Authority (SCA). The SCA was created with the purpose of designing and modernizing existing schools, including a total revision of the schools' telecommunications systems. Partial revisions and upgrading of the system are still within the jurisdiction of BOT and DCIS. Many of the telecommunications employees SCA employs were transferred from the employer herein when the SCA was created. The petitioner argued that since it represents similar titles in the SCA, whose sole client is the employer, that a community of interest exists between employees of both entities due to their unique relationship. The Director rejected this argument, finding that the fact that the petitioner represents similar titles employed by a different public employer was not relevant to his inquiry in the instant case.

In 1988, the employer created the in-issue telecommunications titles and transferred certain telecommunications functions from employees in its DSF, represented by the petitioner, to those new titles; it assigned the nine employees who were to fill those titles to the BOT. In 1993, the employer created an additional eleven telecommunications positions in its DCIS.[6/]

The employees who are currently represented by the petitioner, those represented by the intervenor and the in-issue employees all receive salaries in the same range. Only the architects and engineers represented by the petitioner are required to have a college degree and maintain state licenses in their fields.

Before we turn to the substantive issues raised by the petitioner on appeal, its procedural exceptions should be addressed. The petitioner excepts to the rulings made during the processing of the petition, both before and after the hearing, and to the conduct of the hearing itself including, but not limited to, the determination that evidence of the work performed by telecommunications and computer-related titles at SCA was not relevant and should not be included on the record, the determination that the employer had not, as alleged by the

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6/ Although this action was taken shortly before the close of the hearings in this matter, the Director considered the petition to cover these employees and evidence was introduced concerning them at the hearing.

petitioner, "gerrymandered" the proposed unit by assigning telecommunications titles to its DCIS to work more closely with computer-related titles, and the Director's reference to the representation decision of OCB regarding similar titles employed by the City. A review of the record warrants dismissal of those exceptions, based on our finding that, to the extent that discretion was exercised, there was no abuse.[7/]

The petitioner also questions the Director's finding that the intervenor is an employee organization within the meaning of the Act because it bargains with the employer for its unit of employees along with the other constituent locals of DC37, as part of DC37's "Boardwide" contract negotiations. The intervenor represents a unit of employees for whom it bargains in conjunction with DC37 to obtain an employer-wide contract with the employer which covers its unit as well as a number of other units affiliated with DC37, including, at times, the petitioner. Such coalition bargaining as described in this record does not serve to deprive any participant of its identity and, therefore,

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7/ The Director's refusal to give weight to or receive evidence concerning the SCA's uniting and his reference to the OCB's uniting of similar titles was not improper in view of the fact that the employees of SCA were "grandfathered" into certain units represented by the same employee organization that had represented them as employees of the employer, by action of the Legislature. Public Authorities Law, § 1739 (2). The action of the OCB was a unit determination made after hearing by a neutral agency. In any event, without regard to either the SCA's uniting or the OCB decision, we find that the record in this case fully supports the Director's determination.

its employee organization status. As the intervenor is "an organization of any kind having as its primary purpose the improvement of terms and conditions of employment of public employees",[8/] we find no merit to this exception and it is also dismissed.

As to the Director's unit placement, we noted in State of New York (Department of Audit and Control):[9/]

> [T]he unit placement petition puts the appropriateness of the unit under §207 of the Act in issue. Moreover, the unit placement petition proceeds from the finding or admission that the position in issue is not in the petitioner's unit, but should most appropriately be placed there.

The focus of the petitioner's arguments on appeal is on the lack of a community of interest between the employees in issue and those represented by the intervenor. However, the record supports the finding of the Director that the telecommunications titles are most appropriately placed in the unit of computer-related titles represented by the intervenor. Some of the work of the telecommunications titles, such as the utilization of engineering principles in bidding, site selection and preparation, is similar, in some respects, to the work of the engineering titles that the petitioner represents. However, as that work relates to the design, installation and maintenance of certain telecommunications systems, the telecommunications titles

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[8/] Public Employees' Fair Employment Act (Act), §201.5.

[9/] 24 PERB ¶3019, at 3038 (1991).

are intimately involved in the employer's computer system, as are the computer-related titles represented by the intervenor. The telecommunications titles and the computer-related titles share the same professional mission of the employer, they work in the same locations, have common supervision and equivalent educational requirements. For the reasons more fully explained by the Director, the terms and conditions of employment which the telecommunications titles have in common with the employees represented by the intervenor are more significant than those they share with the petitioner.

Therefore, the petitioner's exceptions are dismissed, the decision of the Director is affirmed and the titles of Telecommunications Associate I and II and Telecommunications Specialist are placed into the intervenor's unit.[10/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

10/ Member Schmertz was absent and did not participate.

2H- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ROCHESTER POLICE LOCUST CLUB, INC.,

Charging Party,

-and-

CASE NO. U-14146

CITY OF ROCHESTER,

Respondent.

HARRIS, BEACH & WILCOX (LAWRENCE J. ANDOLINA of Counsel), for Charging Party

LINDA S. KINGSLEY, CORPORATION COUNSEL (CHAD R. HAYDEN of counsel), for Respondent

BOARD DECISION AND ORDER

This case comes to us on exceptions filed by the City of Rochester (City) to a decision by an Administrative Law Judge (ALJ) on a charge filed against the City by the Rochester Police Locust Club, Inc. (Club). The Club alleges in its charge that the City violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it unilaterally transferred work previously performed exclusively by police officers in the City police department's Tele-Serve Unit to nonunit civilian employees in the position of police information clerk (PIC). After a hearing, the ALJ found the City in violation as alleged. As relevant to the City's exceptions, the ALJ held that the Club had exclusivity over the work in issue despite her finding that

nonunit police interns had performed for several years the same duties as the Tele-Serve police officers, as had miscellaneous others from time-to-time. The ALJ held that the use of other than police officers to do work in the Tele-Serve Unit was a "circumscribed" practice which did not serve to breach the Club's exclusivity over the work in issue.

The City's exceptions are limited to the ALJ's determination regarding the Club's exclusivity over the work in issue. The City argues that the ALJ misapplied our case law regarding exclusivity of unit work. Alternatively, the City argues that we should abandon any concept of a discernible boundary to unit work and also permit unilateral transfers of unit work which do not cause unit employees to lose their jobs in recognition of the difficult economic conditions confronting local governments. The Club in its response argues that the ALJ's decision is correct in all respects and should be affirmed.

Having reviewed the record and considered the parties' arguments, we affirm the ALJ's decision.

We have long required public employers to negotiate decisions to transfer exclusive unit work outside a particular negotiating unit in circumstances such as those presented in this case.[1/] As certain of the City's own arguments make clear, decisions to transfer unit work are inextricably entwined with employee compensation and other of employees' terms and

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[1/]See Niagara Frontier Transp. Auth., 18 PERB ¶3083 (1985).

conditions of employment. The Act expresses the Legislature's strong belief that the policies of the State are best advanced by having these issues collectively negotiated. We cannot change the negotiability of these issues according to the economic conditions prevailing at any given time. Collective bargaining regarding terms and conditions of employment remains the policy and law of this State even in challenging economic periods. Indeed, that may be the very time when collective bargaining is most needed and is most beneficial.

We are also unpersuaded by the City's argument that we should abandon any concept of a discernible boundary[2/] to unit work within which to test for a union's exclusivity over unit work. We have applied the concept of a discernible boundary in many cases involving a transfer of unit work and find it to be a logical and practical method of assessing a union's exclusivity over unit work. The City's argument that exclusivity can only be an absolute concept, lost if any nonunit personnel in the past ever did any unit work under any circumstances, ignores the reality of the workplace and the dynamics of the employer-employee relationship. If accepted, the City's argument would foster unnecessary litigation because unions would be forced to protect against any incursion upon exclusivity no matter how insignificant, a result inconsistent with the policy of the Act to promote harmonious and cooperative relationships.

[2/]See Town of West Seneca, 19 PERB ¶3028 (1986), where we first recognized this concept.

The remaining issue is whether the ALJ correctly applied existing case law regarding exclusivity within a discernible boundary. In that respect, we find that she did. The similar work performed by police interns and a criminal justice assistant was done by them on a temporary basis in conjunction with their training and preparation to become a police officer. The work performed by other nonunit titles in handling complaints from citizens is, as explained by the ALJ, dissimilar from the work of the Tele-Serve police personnel. The permanent assignment of civilian PICs to the Tele-Serve Unit overstepped the City's prior use of nonunit personnel and, to that extent, breached the Club's established exclusivity over the work in the Tele-Serve Unit. The City's failure to bargain the transfer of this unit work to nonunit personnel constitutes a violation of the City's duty to negotiate in good faith under §209-a.1(d) of the Act.

For the reasons set forth above, the City's exceptions are denied and the ALJ's decision is affirmed.[3/]

IT IS, THEREFORE, ORDERED that the City:

1. Cease and desist from assigning Tele-Serve duties, denominated as telephonic investigation, initial assessment of appropriateness and completion of preliminary reports on Tele-Serve complaints, to PICs.
2. Restore the work described in paragraph one above to the bargaining unit represented by the Club.

[3/]Member Schmertz was absent and did not participate.

3. Make unit employees whole for lost wages or benefits, if any, suffered as a result of the transfer of the work described in paragraph one above, with interest at the currently prevailing maximum legal rate.
4. Sign and post notice in the form attached at all locations ordinarily used to post notices of information to unit employees.

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees of the City of Rochester (City) in the unit represented by the Rochester Police Locust Club, Inc. (Club) that the City:

1. Will not assign the telephonic investigation, initial assessment of appropriateness and completion of preliminary reports on Tele-Serve complaints to police information clerks.

2. Will restore the work described in paragraph one above to the bargaining unit represented by the Club.

3. Will make unit employees whole for lost wages or benefits, if any, suffered as a result of the transfer of the work described in paragraph one above, with interest at the currently prevailing maximum legal rate.

Dated . . . . . By . . . . . .
(Representative) (Title)

City of Rochester

. . . . . .

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

21- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LOCAL 1170, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Petitioner,

-and-

CASE NO. C-3449

TOWN OF GREECE,

Employer.

LIPSITZ, GREEN, FAHRINGER, ROLL, SALISBURY & CAMBRIA (ROBERT J. REDEN of counsel), for Petitioner

HARTER, SECREST & EMERY (PETER SMITH of counsel), for Employer

BOARD DECISION AND ORDER

By decision dated January 9, 1992,[1/] the Director of Public Employment Practices and Representation (Director) issued a decision finding the following unit of employees of the Town of Greece (Town), sought to be represented by Local 1170, Communications Workers of America, AFL-CIO (CWA), to be most appropriate:

Included: Town Clerk, Fire Marshal, Director of Youth Services, Building Inspector, Assessor, Library Director, and Director of Parks and Recreation.[2/]

Excluded: Town Supervisor and Town Board Members.

[1/]Town of Greece, 25 PERB ¶4002 (1992).

[2/]The Town and CWA had agreed, after the first day of hearing, to exclude the Director of Community Development, Town Engineer, Data Processing Supervisor, Senior Administrative Analyst, Chief of Police, Commissioner of Public Works, Public Relations Officer, Assistant to the Supervisor, Finance Director, Director of Personnel, Town Attorney, Head Automotive Mechanic, Foreman Roads, Special MEO, and Foreman Sewer/Water from the unit originally sought by CWA.

The Director also excluded from the unit the Receiver of Taxes, an elected official sought to be included in the unit by CWA. CWA filed exceptions to the Director's decision based on this exclusion. The Town also filed exceptions to the Director's decision, arguing that all of the titles included in the unit found to be appropriate were managerial and that the Town Clerk was also confidential. The Town further alleged that the titles of Director of Youth Services and Director of Parks and Recreation had been abolished and that their duties had been assumed by the Director of Human Services, a new title not covered by the petition. We remanded the matter to the Director to take further evidence as to the Directors of Youth Services, Parks and Recreation and Human Services.[3/] We noted in the decision on remand (at 3101) that:

> Any decision we would issue in response to the parties' exceptions would not be dispositive of the representation questions, would not be final for purposes of appeal, nor could CWA be certified pursuant to it. Therefore, we would not expedite the processing of this case by reaching the parties' other exceptions at this time. In such circumstances, we believe there is no reason to issue an interim decision on those exceptions. The exceptions as filed, and such other exceptions as may be filed to a decision on remand, may be raised to us at the appropriate later date.

After a hearing, the Director issued his decision[4/] finding that the Director of Human Services was a managerial employee,[5/]

[3/]25 PERB ¶3047 (1992).

[4/]26 PERB ¶4048 (1993).

[5/]He found that the incumbent in the position performed managerial duties which were not inherently part of the duties of the title but were individual to the incumbent. Therefore, he included the title in the unit, while excluding the incumbent employee.

that the title of Director of Youth Services had been abolished and that the title of Director of Parks and Recreation, while vacant, was not abolished and should be included in the unit. The Town thereafter filed exceptions to the Director's conclusion that the title of Director of Parks and Recreation had not been abolished and his determination that the title of Director of Human Services should be included in the bargaining unit even though the incumbent in that title was excluded.

By decision dated March 21, 1994,[6/] we affirmed the Director's decision regarding the Director of Youth Services, and decided that the title of Director of Parks and Recreation had been abolished and that the title of Director of Human Services should be excluded from the unit as managerial. The Town thereafter advised us that the exceptions to the Director's first decision were still pending and that it requested a decision on those exceptions. The Town further requested that we consider testimony given at the hearing on remand as to the changed role of the at-issue employees since the close of the first hearing or that we order additional days of hearing to take evidence on the changes that have taken place in the Town's administration since the Director issued his first decision.

Our decision on remand could be read, as it was by the Town, as not requiring the Town to reassert its earlier exceptions in its exceptions to the Director's decision on remand. We, therefore, now consider the Town's remaining exceptions to the

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[6/]27 PERB ¶3009 (1994).

Director's first decision.[7] We will not, however, reopen the record to take additional evidence of changes that have taken place in the Town's administration since the initial hearing took place. Representation proceedings, even though investigatory in nature, must maintain a certain structure with some conclusion, lest they become open-ended, with no final determination of employees' representation rights. The Town is not without recourse, however. To the extent that the at-issue positions may have accrued additional responsibilities, the Town may, at the appropriate time, file an application to have those titles designated managerial or confidential.

We have not had occasion to address the public employee status of elected officials in prior decisions. The Town's Receiver of Taxes, unlike all of the other at-issue titles who are appointed by the Town Board or Town Supervisor, is elected to a set term with specific statutory duties. A Receiver of Taxes does not obtain the position through "appointment or employment"[8] by the public employer, and both the term of office and the duties of the position are set by statute,[9] and cannot, therefore, be altered or added to by the Town. The Town does not have the authority to discipline or discharge him.

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[7]Although CWA has not advised us that it wishes us to consider its exception to the Director's first decision, neither has it withdrawn its exception. For the same reason that we consider the Town's original exceptions, we will likewise decide CWA's original exception.

[8]Act, §201.7(a).

[9]Town Law §24 provides that an elected Receiver of Taxes shall have a term of office of four years.

Lacking any cognizable degree of control over the Receiver of Taxes, the Town cannot be found to be the "employer" of that employee. As the Receiver of Taxes is not "employed" by the Town as "public employer", we find that the Receiver of Taxes is not a "public employee" within the meaning of the Act and, therefore, may not properly be included in the proposed bargaining unit.[10/]

The Town asserts that all of the remaining titles - Town Clerk, Fire Marshal, Building Inspector, Assessor and Library Director - are managerial due to their policy formulation and contract and personnel administration responsibilities.

All of these employees function as department heads within the Town. They each control the day-to-day operation of their departments, supervise and evaluate their staff, approve vacation schedules, interview prospective employees and recommend current employees for promotion or step advancement on the salary schedule. They all attend a monthly meeting of department heads where issues ranging from births, deaths and birthdays to Town policy and budget preparation are discussed.[11/] Each department head is responsible for the preparation of his or her

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[10/]The Director also rejected the Town's argument that the Assessor, Town Clerk and Building Inspector are not public employees because of their status as "public officers". The Town has not excepted to that determination.

[11/]The record from the initial days of hearing establishes these meetings, chaired by the Town Supervisor, as information-sharing forums. However, the record on remand, although limited, establishes that the tenor of these meetings has changed since the petition was filed. The department heads now meet twice monthly to discuss the Town's mission, delivery of services and, during budget preparation time, they prioritize their departmental needs to fit within the overall Town budget, taking into consideration the needs of each department.

department's budget, using a packet provided by the Town's finance department. The department budgets include fixed costs for salary and benefits, usually maintenance of the prior year's equipment and material levels and may include requests for additional personnel or new program areas. The budgets are subject to approval by the finance department and, finally, the Town Board. All of the department heads have heard grievances at the initial step and two, the Library Director and the Fire Marshal, have each been twice assigned to the second, and final, step of the procedure by the Town Supervisor, when he was unavailable to conduct the hearing.[12/]

Three of the at-issue positions - Assessor, Fire Marshal and Building Inspector - have as their primary responsibility the enforcement and interpretation of state and local laws and codes.

The Assessor, John Sterling, decides the value of Town property using one of three methods of calculation approved by the State and guidelines set by the State Board of Equalization and Assessment. He may also alter an assessment upon request, but only if his review reveals a clerical error. Appeals from his assessments are made to the Town's Board of Assessment Review, where Sterling may be called upon to defend his assessment.

James Piazza, the Fire Marshal, is charged with inspection of buildings within the Town to ensure compliance with the

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[12/]We have previously held that participation in the first level of the grievance procedure is insufficient involvement in the interpretation and implementation of collective bargaining agreements to warrant a managerial designation. See Newburgh Enlarged City Sch. Dist., 21 PERB ¶3047 (1988).

State's Uniform Fire Prevention and Building Code and the Town's Fire Prevention Code. At the time of the hearing, he had recently completed a review of the State Code and drafted a new local ordinance which reflected changes in the State Code. Although reviewed by the Town Supervisor and Town Attorney, the local code had not yet been adopted by the Town Board. Piazza is also a member of the Town's Development Review Board, which meets weekly to review site plans for new developments within the Town. By choice, Piazza rarely attends the meetings.

The Town's Building Inspector, Robert Showers, enforces the uniform fire code and manages the office of building inspection. The majority of his time is spent conducting residential and commercial building inspections and notifying contractors or building owners of any violations. Showers schedules the inspections and, to facilitate these inspections, has created a log system whereby inspectors keep track of the number of inspections performed and mileage logged. He has also computerized his office. With the assistance of the Town Attorney, Showers drafted a building entrance code for access for the handicapped and a law concerning the relocation of houses. Based on his recommendation, the Town Board changed the title of the assistant building and plumbing inspector to deputy building inspector and appointed the individual he suggested.

As we have noted previously, only those employees who have a direct and powerful influence on policy formulation at the highest level will be determined to be managerial under the

formulation of policy criteria of §201.7(a) of the Act.[13/] We defined "formulation of policy" in City of Binghamton, 12 PERB ¶3099, at 3185 (1979). We there held:

> To formulate policy is to participate with regularity in the essential process involving the determination of the goals and objectives of the government involved, and of the methods for accomplishing those goals and objectives that have a substantial impact upon the affairs and the constituency of the government. The formulation of policy does not extend to the determination of methods of operation that are merely of a technical nature.

Neither the Assessor, the Fire Marshal nor the Building Inspector meet this criterion for designation as managerial. Their participation in the department heads' meetings consists of discussing Town objectives, social items and, annually, budget concerns. There is no evidence that any Town policy is set at those meetings. They are responsible for the daily operation of their own departments and compliance with statutory obligations. There is little, if any, room for independent judgement in the enforcement of the codes and laws which they administer.[14/] We find that the Assessor, the Fire Marshal and the Building Inspector do not formulate policy as it has been defined and applied by us and are not, therefore, managerial employees within the meaning of the Act.

A like conclusion is warranted regarding the Library Director, June Shapiro. The role of the Library Board to whom she reports has evolved from purely advisory to a more hands-on approach over the last few years. While the Board looks to

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[13/] County of Cayuga, 20 PERB ¶3024, at 3040 (1987).

[14/] See Town of Greece, 16 PERB ¶3059 (1983).

Shapiro for recommendations and advice on a variety of topics, not all of her recommendations are followed. She is responsible for the day-to-day delivery of library services at the Town's five libraries. She has had input into a variety of program changes, such as the requirements for obtaining a library card, book acquisition procedures, designation of a library as a resource library and design of a new library, and she has recommended that one of the Town's libraries be designated as an historic landmark. Some of these suggestions were generated by questions from the general public and others were in response to inquiries from the Library Board itself. It cannot be said on this record, therefore, that she "offers regular and substantial advice on the direction in which the library should go in offering services to the public."[15/] Her duties, while certainly supervisory, do not support her exclusion from the proposed unit as a managerial employee.

The Town seeks exclusion of Janet DiPalma, the Town Clerk, from the unit sought by CWA because of her managerial and/or confidential duties. As Town Clerk, she is secretary to the Town Board and is responsible for preparing the agenda for their meetings. She has attended executive sessions of the Town Board, although she no longer does so. The Town Supervisor testified that he intended for her to resume regular attendance. DiPalma, as subregistrar, is also responsible for the issuance of marriage licenses and death and burial certificates. She is also the

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[15/]City of White Plains, 14 PERB ¶4024, at 4043, aff'd, 14 PERB ¶3052 (1981).

coordinator of elections, ensuring that they are properly scheduled and staffed with the appropriate personnel. Her other duties include acting as the Town's official recorder; she is, as a result, the Freedom of Information Act officer. She also issues hunting and fishing licenses, licenses for games of chance and garbage and environmental conservation licenses. For several contracts, DiPalma was a member of the Town's two-person negotiating team. With the filing of the instant petition, the Town Supervisor removed DiPalma from the team.

As with the other department heads discussed previously, DiPalma's attendance at the department head meetings would not warrant the conclusion that she is managerial. Neither would the duties she performs in her varied roles for the Town because they involve either the day-to-day operation of her department or the effectuation of statutory responsibilities, in which she has little opportunity to exercise independent judgement. Her attendance at executive sessions in the past would not support a determination that she is a confidential employee, since she no longer performs those duties and, while she may be called upon to attend those meetings in the future, that prediction cannot form the basis for her designation as confidential. However, her past participation in negotiations as one-half of the Town's negotiating team is sufficient to exclude her from the proposed unit as a managerial employee. As a department head, with a long tenure with the Town and expertise in many areas of Town operations, it is readily apparent why the Town has assigned negotiating responsibilities to DiPalma in the past and why she

may be reasonably required to perform such duties in the future. We do not look only to the job description in making these managerial determinations. Our investigations have always focused on the duties actually performed or duties which may reasonably be required to be performed to form the basis for our including or excluding managerial employees from the Act's coverage pursuant to §201.7(a)(ii) of the Act. That the assignment of negotiations responsibilities has been suspended by the Town during the processing of this petition does not require a contrary conclusion.[16/] We find, therefore, that the title of Town Clerk is not appropriately placed in the unit sought by CWA.[17/]

Accordingly, we find the most appropriate bargaining unit to be as follows:

Included: Library Director, Fire Marshal, Building Inspector and Assessor.

Excluded: Town Supervisor, Town Board members and all other employees of the Town.

IT IS, THEREFORE, ORDERED that an election by secret ballot be held under the supervision of the Director among the employees in the above unit who were employed by the Town on the payroll date immediately preceding the date of this decision, unless CWA submits to the Director, within fifteen days from the date of its receipt of this decision, evidence to satisfy the requirements of §201.9(g)(1) of PERB's Rules of Procedure.

[16/]City of Jamestown, 19 PERB ¶3019 (1986), conf'd, 126 A.D.2d 826, 20 PERB ¶7004 (3d Dep't 1987).

[17/]Member Schmertz was absent and did not participate.

IT IS FURTHER ORDERED that the Town shall submit to the Director and to CWA, within fifteen days from the date of its receipt of this decision, an alphabetized list of all eligible employees within the above unit who were employed by the Town on the payroll date immediately preceding the date of this decision.

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

2J- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Charging Party,

-and-

CASE NO. U-13069

STATE OF NEW YORK (DIVISION OF MILITARY AND NAVAL AFFAIRS),

Respondent.

NANCY E. HOFFMAN, GENERAL COUNSEL (PAMELA BRUCE of counsel), for Charging Party

WALTER L. PELLEGRINI, GENERAL COUNSEL (JULIE SANTIAGO of counsel), for Respondent

BOARD DECISION AND ORDER

The Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) excepts to an Administrative Law Judge's (ALJ) dismissal after hearing of its charge against the State of New York (Division of Military and Naval Affairs) (State). CSEA alleges in its charge that the State violated §209-a.1(d) of the Public Employees' Fair Employment Act (Act) when it transferred gate security duties at the Hancock Air Base from unit Air Base Security Guards (ABSG) to nonunit, federal Air Guard Reservists (AGR) on November 20-22, 1991. The ALJ dismissed the charge because CSEA did not have exclusivity over security at the gates, however broadly or narrowly that work was defined. The ALJ held that gate security duties had been performed regularly by nonunit

AGRs since their first appearance at the air base in August 1990 and by nonunit Air National Guards (ANG) since at least 1985.

CSEA argues in its exceptions that it had exclusivity over gate security. It discounts as irrelevant the ANGs' gate duties because, it argues, they were rendered within a discernible boundary of peacetime training, wartime protection or emergency situations. As to the AGRs' gate detail, CSEA argues that it had no notice or knowledge that AGRs were assigned to gate duties on other than a temporary relief basis and, therefore, it did not waive its exclusivity over that work.

The State argues in its response that the ALJ was correct in concluding that the unit ABSGs never had exclusivity over gate duties or, for that matter, any of its other security operations. Accordingly, it urges that we affirm the ALJ's decision.

Having reviewed the record and considered the parties' arguments, we affirm the ALJ's decision.

CSEA's case hinges on distinguishing the gate duties performed by the ANGs and the AGRs from those done by the ABSGs. Even were we to conclude that the ANGs' gate duties were rendered within some discernible boundary, we are left with the fact that the credited testimony of the State's witnesses establishes that nonunit AGRs had been performing the same gate duties as the unit ABSGs for more than one year before the alleged "transfer" of duties to the AGRs in November 1991. In fact, the November 1991 transfer was not the first assignment of nonunit personnel, but merely a continuation of assignments which had been made for more

than a year. CSEA argues, however, that we should disregard the State's use of AGRs on gate detail because it did not know they were doing that work except for a few, very brief relief assignments which were, as the ALJ found, not sufficient to breach its exclusivity.

We do not consider the issue in this context to be a waiver of exclusivity, but whether CSEA had exclusivity in fact over the work at the date of the alleged transfer. In that regard, the record shows quite clearly that the AGRs were used openly and regularly in this aspect of the State's security operations for a substantial period of time.[1/] CSEA cannot establish or, perhaps more accurately, reestablish exclusivity over work in fact done by nonunit personnel, merely by showing that it was unaware that others outside its unit were regularly doing that work. To hold that a union's ignorance of an employer's open assignment of nonunit personnel to work also done by unit personnel establishes or maintains the union's exclusivity over that work would be inconsistent with the approach we have taken in cases involving the transfer of unit work. It would test exclusivity over unit work only by the extent of the union's knowledge of assignments, forcing repeated inquiries into and determinations about the reasonableness of the union's ignorance. An employer's utilization of nonunit personnel in fact would be irrelevant, except as it bore upon the reasonableness of the union's asserted

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[1/]There is no claim or evidence that the use of AGRs for gate duty was in any way surreptitious.

unawareness of that utilization. This would effectively remove from the union any burden to establish exclusivity in fact over the work and shift to an employer a burden to rebut the union's claim that it did not know and could not have known that nonunit personnel were being used to do work over which the union claims exclusivity. Were we to focus on a union's knowledge of employee utilization to establish exclusivity, we would effectively alter the respective burdens of proof in transfer of work cases and, thereby, distort the balance of competing rights and interests we struck in Niagara Frontier Transportation Authority.[2/] We believe that the standards we established in Niagara Frontier Transportation Authority reasonably protect the rights and interests of unions and employers alike and promote the purposes and policies of the Act.

We are not called upon and do not decide whether a transfer of work under different circumstances or for a shorter period of time would have disestablished CSEA's exclusivity. We hold only that a regular and open assignment of nonunit personnel to work done by unit employees for a period in excess of one year constitutes a breach of exclusivity which precludes CSEA from establishing exclusivity in fact over the work allegedly transferred.

CSEA's other exceptions are either related to the points already discussed or they would not affect our disposition of the

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[2/]18 PERB ¶3083 (1985).

charge. Accordingly, they are dismissed without further discussion.

For the reasons set forth above, CSEA's exceptions are dismissed and the ALJ's decision is affirmed.

IT IS, THEREFORE, ORDERED that the charge must be, and it hereby is, dismissed.[3/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

[3/]Member Schmertz was absent and did not participate.

3A- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

DUTCHESS COUNTY DEPUTY SHERIFFS POLICE BENEVOLENT ASSOCIATION,

Petitioner,

-and-

CASE NO. C-3961

COUNTY OF DUTCHESS AND DUTCHESS COUNTY SHERIFF,

Employer,

-and-

NEW YORK STATE FEDERATION OF POLICE, INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Dutchess County Deputy Sheriffs Police Benevolent Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

DUTCHESS COUNTY DEPUTY SHERIFFS POLICE BENEVOLENT ASSOCIATION,

Petitioner,

-and-

CASE NO. C-3961

COUNTY OF DUTCHESS AND DUTCHESS COUNTY SHERIFF,

Employer,

-and-

NEW YORK STATE FEDERATION OF POLICE, INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Dutchess County Deputy Sheriffs Police Benevolent Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of

collective negotiations and the settlement of grievances.

Unit: Included: Deputy Sheriff, Deputy Sheriff Sergeant, Deputy Sheriff Lieutenant, Deputy Sheriff-Civil, Deputy Sheriff Sergeant-Civil, and Deputy Sheriff Lieutenant-Civil.

Excluded: All other employees

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Dutchess County Deputy Sheriffs Police Benevolent Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.[1/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

1/ Member Schmertz was absent and did not participate.

3R- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ADMINISTRATORS ASSOCIATION OF CHESTER/SAANYS,

Petitioner,

-and- CASE NO. C-4058

CHESTER UNION FREE SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Administrators Association of Chester/SAANYS has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Principals.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

ADMINISTRATORS ASSOCIATION OF CHESTER/SAANYS,

Petitioner,

-and- **CASE NO. C-4058**

CHESTER UNION FREE SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Administrators Association of Chester/SAANYS has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Principals.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer

shall negotiate collectively with the Administrators Association of Chester/SAANYS. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.[1/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

1/ Member Schmertz was absent and did not participate.

3C- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SAANYS/WARSAW ADMINISTRATORS ASSOCIATION,

Petitioner,

-and- CASE NO. C-4066

WARSAW CENTRAL SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the SAANYS/Warsaw Administrators Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Principal and assistant high school principal.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SAANYS/WARSAW ADMINISTRATORS ASSOCIATION,

Petitioner,

-and- **CASE NO. C-4066**

WARSAW CENTRAL SCHOOL DISTRICT,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the SAANYS/Warsaw Administrators Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Principal and assistant high school principal.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer

shall negotiate collectively with the SAANYS/Warsaw Administrators Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.[1/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

1/ Member Schmertz was absent and did not participate.

3D- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WAYNE COUNTY SHERIFF'S SUPERVISORY ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4068

COUNTY OF WAYNE AND WAYNE COUNTY SHERIFF,

Joint-Employer,

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Wayne County Sheriff's Supervisory Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Lieutenants.

Excluded: All other employees.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WAYNE COUNTY SHERIFF'S SUPERVISORY ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4068

COUNTY OF WAYNE AND WAYNE COUNTY SHERIFF,

Joint-Employer,

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Wayne County Sheriff's Supervisory Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Lieutenants.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Wayne County Sheriff's Supervisory Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.[1/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

1/ Member Schmertz was absent and did not participate.

3E- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SAANYS/DANSVILLE ADMINISTRATORS ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4080

DANSVILLE CENTRAL SCHOOL DISTRICT,

Employer,

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the SAANYS/Dansville Administrators Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Principal, special education director and senior high assistant principal/athletic director.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SAANYS/DANSVILLE ADMINISTRATORS ASSOCIATION,

Petitioner,

-and- **CASE NO. C-4080**

DANSVILLE CENTRAL SCHOOL DISTRICT,

Employer,

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the SAANYS/Dansville Administrators Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit found to be appropriate and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Principal, special education director and senior high assistant principal/athletic director.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the SAANYS/Dansville Administrators Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.[1/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

1/ Member Schmertz was absent and did not participate.

3F- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

DUTCHESS COUNTY SHERIFF'S EMPLOYEES ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4106

COUNTY OF DUTCHESS AND DUTCHESS COUNTY SHERIFF,

Employer,

-and-

NEW YORK STATE FEDERATION OF POLICE, INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Dutchess County Sheriff's Employees Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their

exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: See Appendix B Attached.

Excluded: All other Employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Dutchess County Sheriff's Employees Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.[1/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

1/ Member Schmertz was absent and did not participate.

APPENDIX B

TITLE	GRADE ALLOCATION
Account Clerk I (SH)	SF
Account Clerk II (SH)	SH
Account Clerk III (SH)	SK
Account Clerk Typist II (SH)	SH
Account Clerk Typist III (SH)	SK
Automotive and Emergency Equipment Mechanic	SL
Building Maintenance Mechanic I (SH)	SH
Building Maintenance Mechanic II (SH)	SK
Building Maintenance Supervisor (CF)	SP
Clerk II (SH)	SE
Cook (Correctional Facility)	SK
Cook Manager (Correctional Facility)	SM
Correction Lieutenant	SP
Correction Officer	SM
Correction Sergeant	SO
Correctional Programs Coordinator	SO
Court Attendant	SE
Data Entry Operator I (SH)	SF
~~Deputy Sheriff~~	SN
~~Deputy Sheriff Lieutenant~~	SQ
~~Deputy Sheriff Sergeant~~	SP
Education Program Coordinator	SN
Electrician (SH)	SM
Electrician I (SH)	SM
Food Service Director	SP
Food Service Helper (SH)	SD
Head Cleaner (SH)	SF
Heating and Ventilating Technician (SH)	SN
Payroll Clerk (SH)	SJ
Sheriff Aide	SI
Stenographer II (SH)	SG
Stenographer III (SH)	SJ
Supervising Stenographer (SH)	SL
Typist I (SH)	SC
Typist II (SH)	SF

3G- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

POLICE BENEVOLENT ASSOCIATION OF THE WAPPINGERS FALLS POLICE DEPARTMENT,

Petitioner,

-and-

CASE NO. C-4162

VILLAGE OF WAPPINGERS FALLS,

Employer,

-and-

UNITED FEDERATION OF POLICE OFFICERS, INC.,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Police Benevolent Association of the Wappingers Falls Police Department has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative

for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All full-time and part-time police officers.

Excluded: Commissioner of Police Department.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Police Benevolent Association of the Wappingers Falls Police Department. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.[1/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

1/ Member Schmertz was absent and did not participate.

3H- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HOMER SCHOOL FOOD SERVICE ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4185

HOMER CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Homer School Food Service Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HOMER SCHOOL FOOD SERVICE ASSOCIATION,

Petitioner,

-and-

CASE NO. C-4185

HOMER CENTRAL SCHOOL DISTRICT,

Employer,

-and-

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., LOCAL 1000, AFSCME, AFL-CIO,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Homer School Food Service Association has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the

settlement of grievances.

Unit: Included: Cooks, food service helpers, and cashiers.

Excluded: All other employees.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Homer School Food Service Association. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.[1/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

1/ Member Schmertz was absent and did not participate.

31- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF NIAGARA BLUE COLLAR PART-TIME EMPLOYEES UNION, AFSCME, N.Y. COUNCIL 66,

Petitioner,

-and-

CASE NO. C-4216

COUNTY OF NIAGARA,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the County of Niagara Blue Collar Part-Time Employees Union, AFSCME, N.Y. Council 66 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All less than 20 hour blue collar employees employed by the County of Niagara in traditional blue collar titles including: watchperson, van driver, food service helper,

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

COUNTY OF NIAGARA BLUE COLLAR PART-TIME EMPLOYEES UNION, AFSCME, N.Y. COUNCIL 66,

Petitioner,

-and-

CASE NO. C-4216

COUNTY OF NIAGARA,

Employer.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the County of Niagara Blue Collar Part-Time Employees Union, AFSCME, N.Y. Council 66 has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All less than 20 hour blue collar employees employed by the County of Niagara in traditional blue collar titles including: watchperson, van driver, food service helper,

cook, laborer, certified nurses aide, kitchen attendant, cleaner, laundry worker, nutritional service assistant, assistant cook.

Excluded: Any blue collar regular part-time (20 hours or more) employees or full-time employees covered by the existing collective bargaining agreement with AFSCME Local 182.

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the County of Niagara Blue Collar Part-Time Employees Union, AFSCME, N.Y. Council 66. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.[1/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

1/ Member Schmertz was absent and did not participate.

3J- 5/31/94

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

KENDALL ESP ASSOCIATION, NATIONAL EDUCATION ASSOCIATION OF NEW YORK,

Petitioner,

-and-

CASE NO. C-4227

KENDALL CENTRAL SCHOOL DISTRICT,

Employer,

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Kendall ESP Association, National Education Association of New York has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All teacher aides and secretarial employees, clerks and typists.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

KENDALL ESP ASSOCIATION, NATIONAL EDUCATION ASSOCIATION OF NEW YORK,

Petitioner,

-and- **CASE NO. C-4227**

KENDALL CENTRAL SCHOOL DISTRICT,

Employer,

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Kendall ESP Association, National Education Association of New York has been designated and selected by a majority of the employees of the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: All teacher aides and secretarial employees, clerks and typists.

Excluded: Temporary, casual, and substitute employees, clerk/district clerk (District Office), account clerk/typist (District Office), principal account clerk/treasurer (District Office) and typist (District Office).

FURTHER, IT IS ORDERED that the above named public employer shall negotiate collectively with the Kendall ESP Association, National Education Association of New York has. The duty to negotiate collectively includes the mutual obligation to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written agreement incorporating any agreement reached if requested by either party. Such obligation does not compel either party to agree to a proposal or require the making of a concession.[1/]

DATED: May 31, 1994
Albany, New York

Pauline R. Kinsella, Chairperson

Walter L. Eisenberg, Member

1/ Member Schmertz was absent and did not participate.